Supreme Court, U.S.
FILED
MAY 10 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5937

VENTURA E. YBARRA,
Appellant,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

On Appeal From The Appellate Court Of Illinois, Second District

BRIEF FOR THE APPELLANT

RALPH RUEBNER,
Deputy Defender

ALAN D. GOLDBERG,
Assistant Defender
Office of the State Appellate Defender
First Judicial District
130 North Wells Street
Suite 2200
Chicago, Illinois 60606
(312) 793-5472
Counsel For Appellant

MARY ROBINSON,
Deputy Defender
Office of the State Appellate Defender
Second Judicial District
63 Douglas Avenue
Elgin, Illinois 60120
Of Counsel

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 2

QUESTION PRESENTED 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT 4

SUMMARY OF ARGUMENT 9

ARGUMENT 10

WHERE A GROUP OF POLICE OFFICERS SEARCHED ALL THE PATRONS OF A PUBLIC ESTABLISHMENT INCIDENT TO THE EXECUTION OF A SEARCH WARRANT FOR THE PREMISES, EVEN THOUGH THE OFFICERS DID NOT HAVE PROBABLE CAUSE OR REASONABLE GROUNDS TO BELIEVE THAT ANY PATRON HAD COMMITTED AN OFFENSE, WAS CONNECTED TO THE CONTRABAND FOR WHICH THEY WERE SEARCHING, OR POSED A THREAT TO THEIR SAFETY, THE OFFICERS' ACTIONS VIOLATED THE FOURTH AMENDMENT. THE ILLINOIS STATUTE WHICH HAS BEEN HELD TO PERMIT THIS CONDUCT IS UNCONSTITUTIONAL AS APPLIED 10

A. Introduction 10

B. The officers who executed the warrant did not have probable cause or reasonable grounds to believe that Ven-

tura Ybarra or any other patron possessed the contraband for which they were looking or posed a threat to their safety 11

C. The search of Ventura Ybarra at the Aurora Tap, merely because he happened to be present when a search warrant was being executed, violated the Fourth Amendment 13

CONCLUSION 18

TABLE OF AUTHORITIES

CASES — Page

Brown v. *Wainwright*, 337 So. 2d 416 (Fla. App., 1976) 16

City of Tacoma v. *Mundell*, 6 Wash. App. 673, 495 P.2d 682 (1972) 14

Commonwealth v. *Platou*, 455 Pa. 258, 312 A.2d (1973) 14, 15

McAllister v. *State*, 159 Ind. App. 340, 306 N.E. 2d 395 (1974) 14

People v. *Costales*, 39 N.Y. 2d 973, 354 N.E. 2d 849 (1976) 14

People v. *Lujan*, 174 Colo. 554, 484 P.2d 1238 (1971) 14

People v. *Nieves*, 36 N.Y. 2d 396, 330 N.E. 2d 26 (1975) 16

People v. *Smith*, 21 N.Y. 2d 698, 234 N.E. 2d 460 (1967) 14

People v. *Ybarra*, 58 Ill. App. 3d 57, 373 N.E. 2d 1013 (1978) 1, 8

Sibiski v. *State*, 19 Md. App. 149, 310 A.2d 200 (1973) 14

Sibron v. *New York*, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) 14

Smith v. *State*, 139 Ga. App. 129, 227 S.E. 2d 911 (1976) 16

Smith v. *State*, 292 Ala. 120, 289 So. 2d 816 (1974) 14

Stanford v. *Texas*, 379 U.S. 476, 85 S. Ct. 506, 13 L. Ed. 2d 431 (1965) 15

Page

State v. *Bradbury*, 109 N.H. 105, 243 A.2d 302 (1968) 14

State v. *Burns*, 306 A.2d 8 (Me. Sup. Ct., 1973) 14

State v. *Carufel*, 106 R.I. 739, 263 A.2d 686 (1972) 14

State v. *Cochran*, 135 Ga. App. 47, 217 S.E. 2d 181 (1975) 14

State v. *Fox*, 283 Minn. 176, 168 N.W. 2d 260 (1969) 14

State v. *Helton*, 146 N.J. Super. 98, 369 A.2d 10 (1975), *aff'd* 72 N.J. 169, 369 A.2d 10 (1977) .. 15

State v. *Mendez*, 115 Ariz. 367, 565 P.2d 873 (1977) 16

State v. *Nabarro*, 55 H. 583, 525 P.2d 573 (1974) 14

State v. *Sims*, 75 N.J. 337, 382 A.2d 638 (1978) 14, 15

State v. *Wise*, 284 A.2d 292 (Del. Super. Ct., 1971) 14, 15

Terry v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) 12

United States v. *Branch*, 545 F.2d 177 (D.C. Cir., 1976) 14

United States v. *DiRe*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948) 7, 13, 14

United States v. *Festa*, 192 F.Supp. 160 (D.C. Mass., 1960 14

Page

United State v. *Haywood*, 284 F. Supp. 245 (D.C. La., 1968) 14

Wilson v. *State*, 136 Ga. App. 70, 221 S.E. 2d 62 (1975) 15

CONSTITUTIONAL AND STATUTORY PROVISIONS

Illinois Revised Statutes, 1975, Chapter 38 Section 108-9 ..... 4, 7, 8, 13

United States Constitution, Amendment IV 3

United States Constitution, Amendment XIV, Section 1 3

MISCELLANEOUS

Comment, 58 Cornell Law Review 614 (1973) 16

LaFave, *Search and Seizure; The Course of True Law ... Has Not ... Run Smooth*, 1966 Illinois Law Forum 266 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5937

VENTURA E. YBARRA,
Appellant,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

On Appeal From The Appellate Court Of Illinois, Second District

---

BRIEF FOR APPELLANT

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Second Judicial District, is reported at 58 Ill. App. 3d 57, 373 N.E. 2d 1013 (1978) and is reproduced in the Appendix (hereinafter "A") at pages A. 79-87. Copies of the unreported orders of the Appellate Court denying rehearing and a certificate of importance may

be found at A. 88-89. The unreported order of the Illinois Supreme Court denying leave to appeal appears at A. 90.

JURISDICTION

The decision of the Illinois Appellate Court in this case, affirming appellant's conviction for possession of heroin, was issued on February 9, 1978. (A. 79) Rehearing was sought, but was denied on April 7, 1978. (A. 88) The Appellate Court was also asked to certify the importance of this question to the Illinois Supreme Court, but this request was denied on April 10, 1978. (A. 89) A petition for leave to appeal was filed, but was denied by the Illinois Supreme Court on September 28, 1978. (A. 90) Notice of Appeal to the United States Supreme Court was filed on December 1, 1978, in the Illinois Appellate Court for the Second Judicial District. The Jurisdictional Statement was filed in this Court on December 22, 1978, and probable jurisdiction was noted on March 26, 1979. (A. 92)

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2), for the validity of a state statute was drawn into question below "on the grounds of its being repugnant to the Constitution . . . of the United States and the decision [was] in favor of its validity". 28 U.S.C. §1257(2).

QUESTION PRESENTED

Can Illinois By Statute Give Police Officers The Authority To Search All The Patrons Of A Public Establishment Incident To The Execution Of A Search Warrant For The Premises, Where The Officers Did Not Have Probable Cause Or Reasonable Grounds To Believe That Any Patron Had Committed An Offense, Was Connected To The Contraband For Which They Were Searching, Or Posed A Threat To Their Safety?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

> the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Illinois Revised Statutes, 1975, Chapter 38, Sec. 108-9 provides:

> *Detention and Search of Persons on Premises.* In the execution of the warrant the person executing the same may reasonably detain to search any person in the place at the time:
>
> (a) To protect himself from attack, or
>
> (b) To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant.

STATEMENT

Ventura Ybarra was charged by a Kane County, Illinois grand jury with unlawful possession of heroin. (A. 18) The defense filed a pre-trial motion to suppress the heroin that had been seized from Ventura Ybarra during a search of Ybarra and approximately twelve other lawful patrons of a public tavern known as the Aurora Tap. (A. 19) The basis of the motion was that the officers who conducted the search had no probable cause to search Ybarra, and had no warrant respecting him. (A. 19) At the hearing on this motion, Agent Jerome Johnson testified as follows:

On March 1, 1976, at about 4:10 p.m., while working as an investigator for the Illinois Bureau of Investigation, Johnson participated in the execution of a search warrant at the Aurora Tap, a public drinking establishment. (A. 24) Also taking part in the execution of the warrant were Special Agents Doster, Moraitis and Santercier, Detective Weaver, Lieutenant Williams, and "several other uniformed officers from the Aurora Police Department". (A. 24; See also preliminary hearing transcript at A. 9.) The search warrant authorized the search of the Aurora Tap Tavern, and a bartender within it by the name of Greg, for evidence of the offense of possession of a controlled substance. (A. 25,5) Neither the warrant nor the complaint for warrant indicated that patrons of the tavern were involved in any criminal activity. (A. 2-6)

Agent Johnson stated that nine to thirteen patrons were in the tavern when he arrived there, and that he was not looking for anyone in particular. (A. 26; See also trial transcript at A. 48.) Johnson had not seen any of the patrons before. (A. 26) On entering the tavern, the agents announced their purpose and advised everyone to stay where they were, and that they were going to make a "cursory search for weapons". (A. 27,30)[1] The lighting was sufficient in the tavern

---

[1] At the preliminary hearing, Johnson's testimony was as follows:

> We then advised all patrons to rise in their seats for a cursory search for weapons. At that time Special Agent Doster ordered me to search one Ybarra for a controlled substance. (A. 9)

for him to observe the customers. (A. 27) Johnson stated that when the officers entered, Ventura Ybarra was standing by a pinball machine, dressed in a red and black jacket. (A. 27) He noticed nothing protruding from Ybarra's clothing, and there was no indication that he had a weapon or was hostile. (A. 27-29) Ybarra was standing in the general vicinity of all the other patrons. (A. 27)

At this point, Agent Johnson searched every customer, including Ventura Ybarra. (A. 27-28,31) At the time that Ybarra was searched, Agent Johnson had no knowledge or indication that he or any of the other customers had committed any offense. (A. 28) Ventura Ybarra did not make any threatening moves toward anyone nor any gesture indicative of criminal conduct. (A. 28-29) Agent Johnson described his search of Ybarra as "more or less a pat down, cursory search for weapons for our protection". (A. 32) Upon questioning by defense counsel, he stated that he found nothing, but on being cross-examined by the State's Attorney, he stated he felt a cigarette pack with objects in it. (A. 28, 32) After completing his search of all the patrons in the tavern, he returned and searched Ybarra a second time. (A. 32) Agent Johnson still had no indication that Ybarra had a weapon prior to this second search, and Ybarra's hands, which were empty, were visible to him. (A. 29) Johnson also had no indication prior to this second search that Ybarra had committed an offense, or that he had any contraband on his person. (A. 29; See also

trial transcript, at A. 59.) The second search of Ybarra took place two or three minutes after the first. (A. 32) Agent Johnson testified that he removed six tin foil packets of heroin from Ybarra's pocket during this second search. (A. 30,50)[2]

Johnson also stated that there was one entrance and one exit in the tavern and that the tavern was a fairly large room. (A. 31; See also trial transcript, at A. 59.) Both during and after the search, patrons were prevented from entering or leaving. (Trial transcript, A. 60)

During argument on this motion, the State claimed that the search of Ybarra was justified under Chapter 38, Section 108-9 of the Illinois Revised Statutes, which is set out in the "Constitutional and Statutory Provisions Involved" section of this brief. The prosecutor conceded that probable cause to search Ybarra did not exist, but he argued that the statute provides that "when the police officers are executing a search warrant, the people who are there are also part of the premises". (A. 39) The defense attorney argued that this statute was of dubious constitutionality, citing *United States* v. *DiRe*, 332 U.S. 581, 68 S. Ct. 222, 92 L. Ed. 210 (1948). (A. 41)

The Court denied the motion to suppress and made the following findings of fact:

---

[2] At trial, Johnson testified that he patted Ybarra down again when he returned to him after searching the other patrons, felt something in Ybarra's pocket during the second pat-down, and then placed his hand in Ybarra's pocket. (A. 50, 60-61)

> I would make the finding of fact that the search for weapons was conducted and that search was under Section (b) [of Sec. 108-9]: To prevent the disposal or concealment of any instrument, article or things described in the Search Warrant. (A. 43)

The case proceeded to a trial before the court, and Ybarra was found guilty of possession of heroin. (A. 70) Ybarra was then sentenced to two years probation. (A. 78)

An appeal was taken to the Appellate Court of Illinois, Second Judicial District. The only issue on appeal was whether the search was violative of the Fourth Amendment and whether Section 108-9, if construed so as to permit searches of this type, was unconstitutional. The Appellate Court summarized its holding as follows:

> In summation, we do not find Section 108-9 of the Illinois Code of Criminal Procedure to be unconstitutional in its application to the facts before us. We therefore affirm the judgment of the conviction of the defendant herein. *People* v. *Ybarra*, 373 N.E. 2d 1013, 1017. (A. 87)

The Appellate Court also stated that "in the complaint for the search warrant before us the allegation was made that the bar was frequented by persons illegally purchasing drugs". 373 N.E. 2d at 1015. (A. 82) However, no such allegation is contained in the complaint for search warrant. (A. 2-3)

Following the denial of a petition for rehearing and for certificate of importance by the Appellate Court, appellant filed a Petition for Leave to Appeal in the Illinois Supreme Court challenging the reasonableness of the search and the constitutionality of the Appellate Court's interpretation of the statute. This petition was denied. (A. 88-90)

SUMMARY OF ARGUMENT

In the course of executing a search warrant at a public tavern in Aurora, Illinois, a group of at least seven or eight police officers searched all of the patrons of the tavern, including the appellant. The officers had no reasonable suspicions of any kind regarding these patrons, and the trial and appellate courts upheld the search, not on traditional grounds of probable cause or articulable suspicion, but on the basis of an Illinois statute which permits the search of all those present where a search warrant is being executed.

The police procedure utilized here violated the Fourth Amendment, because a citizens's mere presence on premises where a search warrant is being executed does not make him subject to search. The statute which was construed by the Illinois courts as allowing this conduct is unconstitutional as applied to the facts of this case, for it operated to transform the search warrant into an illegal general warrant. Since no facts justifying the intrusions were present,

the police conduct in searching Ventura Ybarra and the other patrons was illegal.

ARGUMENT

Where A Group Of Police Officers Searched All The Patrons Of A Public Establishment Incident To The Execution Of A Search Warrant For The Premises, Even Though The Officers Did Not Have Probable Cause Or Reasonable Grounds To Believe That Any Patron Had Committed An Offense, Was Connected To The Contraband For Which They Were Searching, Or Posed A Threat To Their Safety, The Officers' Actions Violated The Fourth Amendment. The Illinois Statute Which Has Been Held To Permit This Conduct Is Unconstitutional As Applied

A. *Introduction*

The record in this case presents a simple, yet striking, fact situation. A group of at least seven or eight police officers and Illinois Bureau of Investigation agents entered a public tavern in Aurora, Illinois, for the purpose of executing a search warrant for the premises and the bartender. The warrant authorized a search for evidence of the crime of narcotics possession. There were between nine and thirteen patrons in the bar. Each and every one of these patrons was then searched, although the testimony of the officer who personally conducted the searches makes it clear that

he had no suspicions of any kind regarding the patrons. Ventura Ybarra, one of the patrons, was searched twice, but the officer's testimony establishes that he had no suspicions regarding Ybarra before either the first or the second search. It is the appellant's contention that this procedure was violative of the Fourth Amendment to the United States Constitution, and that the Illinois statute which authorizes it is unconstitutional as applied.

B. *The officers who executed the warrant did not have probable cause or reasonable grounds to believe that Ventura Ybarra or any other patron possessed the contraband for which they were looking or posed a threat to their safety.*

Agent Jerome Johnson was the only witness at the hearing on Ybarra's motion to suppress evidence. His testimony makes it clear that the search of the patrons of the Aurora Tap was not based on any articulable suspicion or probable cause regarding the patrons, but rather was conducted simply as a matter of course.

Immediately upon entering the bar, the police ordered every person in the Aurora Tap to submit to what Johnson described as a "cursory search for weapons". (A. 27-30) Yet Johnson admitted that he had no indication that Ventura Ybarra or any other patron was violating any law, and also testified that

Ybarra made no threatening moves or gestures, and that he did not give any indication of having a weapon. (A. 27-29) Johnson could point to no "specific and articulable facts" justifying a pat-down for weapons, *cf. Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968), nor did he have probable cause to believe that the patrons possessed narcotics.

After searching every patron once, Agent Johnson searched Ventura Ybarra a second time, even though he had felt nothing more suspicious than "a cigarette pack with objects in it" during his first pat-down of Ybarra. (A. 28 32) Johnson testified that prior to this second search he still had no indication that Ybarra had a weapon or contraband. (A. 29 59) It was during the second search that Johnson extracted six tin foil packets containing heroin from Ybarra's pocket. Again, however, Johnson could point to no facts which would reasonably justify a search.

It is noteworthy that the prosecutor's argument at the hearing on the motion to suppress was based solely on Illinois statute concerning the search of persons present where a search warrant is being executed. Indeed, the prosecutor conceded that probable cause to search Ybarra did not exist, but argued that the statute indicated that "when the police officers are executing a warrant, the people who are there are part of the premises". (A. 39) The prosecutor's argument points up the fact that the searches were based merely on the presence of the patrons on the premises.

The trial court and the Appellate Court found that the search was justified under Illinois Revised Statutes, 1975, Chapter 38, Section 108-9:

> *Detention And Search Of Persons On Premises.*
>
> In the execution of the warrant the person executing the same may reasonably detain to search any person in the place at the time:
>
> (a) To protect himself from attack,
>
> or
>
> (b) To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant.

Both courts relied on Part (b) of the statute to uphold the search. Yet in construing the statute, neither court required a showing that a searching officer believe that the person searched is in possession of the contraband or poses a threat to the officer's safety in order to justify the search. The statute as construed by the Appellate Court thus gives carte blanche to police officers to search any and all persons they may encounter while executing a search warrant. As will be shown, such a holding is in conflict with the Fourth Amendment.

C. *The search of Ventura Ybarra at the Aurora Tap, merely because he happened to be present when a search warrant was being executed, violated the Fourth Amendment.*

Ever since the Government conceded, in the widely cited case of *United States* v. *DiRe*, 332 U.S. 581, 587,

68 S. Ct. 222, 225, 92 L. Ed.210, 216 (1948), that a search warrant for premises could not justify a search of all persons on them, this concept has been accepted virtually without question. *See DiRe* and the authorities cited in footnote below.[3] Another rule, equally well accepted, is that a person's mere presence at the scene of suspected criminal activity, without more, does not give rise to probable cause to search that person. *Sibron* v. *New York*, 392 U.S. 40, 62, 88 S. Ct. 1889, 20 L. Ed.2d 917, 934 (1968). The conduct of the police in this case violated both rules, for, as shown above, the record demonstrates that the police searched the patrons solely because of their presence in the bar.

---

[3] *U.S.* v. *Branch*, 545 F. 2d 177, 181 (D.C. Cir., 1976);
U.S. v. *Festa*,192 F. Supp. 160, 163 (D.C. Mass., 1960);
U.S. v. *Haywood*, 284 F. Supp. 245 (D.C. La., 1968);
City of Tacoma v. *Mundell*, 6 Wash. App. 673, 495 P. 2d 682, 685 (1972);
State v. *Burns*, 306 A. 2d 8, 10 (Me. Sup. Ct., 1973);
Sibiski v. *State*, 9 Md. App. 149, 310 A. 2d 200, 201 (1973);
Smith v. *State*, 292 Ala. 120, 289 So. 2d 816 (1974);
Commonwealth v. *Platou*, 455 Pa. 258, 312 A. 2d 29 (1973);
State v. *Bradbury*, 109 N.H. 105, 243 A. 2d 302 (1968);
People v. *Smith*, 21 N.Y. 2d 698, 234 N.E. 2d 460 (1967);
People v. *Costales*, 39 N.Y. 2d 973, 354 N.E. 2d 849 (1976);
People v. *Fox*, 283 Minn. 176, 168 N.W. 2d 260 (1969);
State v. *Nabarro*, 55 H. 583, 525 P. 2d 573 (1974);
State v. *Carufel*, 106 R.I. 739, 263 A. 2d 686, 691 (1972);
People v. *Lujan*, 174 Colo. 554, 484 P. 2d 1238, 1242 (1971);
State v. *Wise*, 284 A. 2d 292 (Del. Super. Ct., 1971);
McAllister v. *State*, 159 Ind. App. 340, 306 N.E. 2d 395 (1974);
State v. *Sims*, 75 N.J. 337, 382 A. 2d 638 (1978);
State v. *Cochran*, 135 Ga. App. 47, 217 S.E. 2d 181 (1975).

The Appellate Court's holding is also in conflict with the fundamental Fourth Amendment proposition that a search warrant must particularly describe the objects of the search. *Stanford* v. *Texas*, 379 U.S. 476, 85 S. Ct. 506, 13 L. Ed. 2d 431 (1965). This proscription against "general warrants" has been held to be violated where a search warrant gives the police the power to search unspecified persons. *Wilson* v. *State*, 136 Ga. App. 70, 221 S.E. 2d 62 (1975); *State* v. *Sims*, 75 N.J. 337, 382 A. 2d 638 (1978); *State* v. *Wise*, 284 A. 2d 292 (Del. Super. Ct., 1971); *Commonwealth* v. *Platou*, 455 Pa. 258, 312 A. 2d 29 (1973). The violation is certainly more severe where the State seeks by statute to automatically include such a power in every search warrant. The statute involved in the instant case, as construed by the Appellate Court, turns every Illinois search warrant into a general warrant.

A number of courts have dealt with the question of what circumstances must be present to justify the search of a person who is found at premises where a search warrant is being executed. This question has arisen both in states with statutes similar to Illinois', and in states without any statutes on this subject. An examination of the cases reveals that where, as here, there is no reason to believe that a person present on premises where a search warrant is being executed possesses the property being searched for or poses a danger to police officers, the courts have held that the search of such a person is impermissible.

Thus, in *State* v. *Helton*, 146 N.J. Super. 98, 369 A. 2d 10 (1975), *aff'd* 72 N.J. 169, 369 A. 2d 10 (1977),

the court held that the search of the defendant and nine other patrons of a tavern, which was being searched for narcotics pursuant to a warrant, was illegal, since there was no reason to believe that the defendant was in possession of the narcotics sought by the police. The court stated that in the absence of probable cause to believe that the defendant was in possession of the narcotics, the defendant could not be searched. *Accord, People* v. *Nieves,* 36 N.Y. 2d 396, 330 N.E. 2d26 (1975); *State* v. *Mendez,* 155 Ariz. 367, 565 P. 2d 873 (1977). In *Smith* v. *State,* 139 Ga. App. 129, 227 S.E. 2d 911 (1976), the Georgia Court of Appeals, in construing a statute virtually identical to the present one, held that in order for a search to be permissible there must be facts and circumstances present which make it likely that the items sought are being concealed or that the party searched is armed. *See also Brown* v. *Wainwright,* 337 So. 2d 416 (Fla. App., 1976); other cases cited in footnote 3, *supra;* W. LaFave, *Search and Seizure; The Course of True Law . . . Has Not . .. Run Smooth,* 1966 Ill. Law Forum 266, 272; Comment, 58 Cornell L. Rev. 614 (1973).

The proposition for which these authorities stand is an elementary one: there must be reasonable justification for the police to search a person whom they find on premises for which they have a search warrant. In this case, there simply was no reasonable justification. Neither the search warrant nor the complaint for search warrant gave the police any reason to be-

lieve that the patrons were dangerous or were involved in the criminal activity under investigation. Nothing in the circumstances which confronted the officers when they entered the Aurora Tap could justify the intrusion. The only reason for these searches was the presence of the patrons on the premises, which is simply not a valid justification for a police intrusion.

If the police conduct which occurred here is upheld by this Court, countless citizens who frequent public establishments will ~~be~~ have to submit to searches merely because they have the bad fortune to be present at a place where a search warrant is executed. This Court is asked to hold that this grossly unreasonable exercise of police authority violated the Fourth Amendment.

CONCLUSION

For the reasons stated, the judgment of the Illinois Appellate Court should be reversed.

RALPH RUEBNER
Deputy Defender

ALAN D. GOLDBERG
Assistant Defender
Office of the State Appellate Defender
130 North Wells Street
Suite 2200
Chicago, Illinois 60606
(312) 793-5472

Counsel For Appellant

MARY ROBINSON,
Deputy Defender
Office of the State Appellate Defender
Second Judicial District
82 Douglas Avenue
Elgin, Illinois 60102
Of Counsel